



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 9391109

Date: JULY 24, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a mechanical engineering researcher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will

substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The record indicates that the Petitioner qualifies as a member of the professions holding an advanced degree.⁴ The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. At the time of filing, the Petitioner was working as a research associate in the Department of Mechanical and Industrial Engineering at [REDACTED]⁵ He previously served as doctoral researcher at [REDACTED] from August 2012 until May 2018.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that he intends to continue his research aimed at “the [REDACTED] of [REDACTED] networks of biological organs, real rock reservoirs, and chemical [REDACTED] in order to explore the effects of nanoparticles [REDACTED] in those structures.” In addition, he stated that his proposed work “will focus on understanding the physics of nanoparticle [REDACTED] mechanisms.” The Petitioner further explained that his proposed research involves [REDACTED] behavior of nanoparticles in real rock structures,” “design and development of [REDACTED] to study drug [REDACTED] prior to clinical trials,” and “design and development of [REDACTED] efficient chemical [REDACTED]”

The record demonstrates that the Petitioner’s proposed endeavor has substantial merit and national importance. For example, the record includes a letter [REDACTED] chair of the Department of Mechanical and Industrial Engineering at [REDACTED] explaining that the Petitioner’s proposed research seeks to advance “the design and development of [REDACTED] devices for use in the oil and gas sector.” The Petitioner also presented information from the U.S. Energy Information Administration relating to the amount of petroleum imported and exported by the United States in 2017. In addition, the Petitioner provided documentation indicating that the benefit of his proposed research has broader implications, as the results are disseminated to others in the field through scientific journals and conferences. As the Petitioner has documented both the substantial merit and national importance of his proposed nanoparticle [REDACTED] mechanism research, he has established that he meets the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes documentation of his curriculum vitae, academic credentials, published articles, conference

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ The Petitioner received a Ph.D. in Mechanical Engineering from [REDACTED] in May 2018.

⁵ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his current position to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

presentations, awards, and research funding. He also offered evidence of articles that cited to his published work, and letters of support discussing his graduate work under the guidance of [redacted] and [redacted] at [redacted]

The Petitioner contends on appeal that his education, research experience in his specialty, published work, citation evidence, recommendation letters from independent references, awards, and research funding demonstrate that he is well positioned to advance his proposed endeavor. For the reasons discussed below, the record supports the Director's determination that the evidence is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed research under *Dhanasar*'s second prong.

In letters supporting the petition, several references discussed the Petitioner's graduate research projects at [redacted].⁶ For example, regarding the Petitioner's work involving fabrication and characterization of [redacted] devices, [redacted], professor at the University of [redacted], stated that the Petitioner developed "a soft lithography process" and "was able to manufacture his [redacted] materials in less than a day, a far shorter span of time than previously thought necessary." [redacted] further asserted that "[a]nother innovation in [the Petitioner's] work was his addition of [redacted] modifiers that enabled users to manipulate the water contact angle to adjust the level of [redacted] exhibited by the material," but he did not provide specific examples indicating that the Petitioner's work has affected production methods in the [redacted] manufacturing industry or otherwise constitutes a record of success in his field.

Likewise, [redacted], senior research engineer at [redacted], indicated that the Petitioner "has developed a method for producing [redacted] material that utilized a [redacted] reaction to produce materials that were natively [redacted]." [redacted] explained that the Petitioner's approach did not require [redacted] modification because the [redacted] modifications necessary to achieve [redacted] were inherent to the material that was produced by this method." [redacted] also claimed that "[t]he practicality of [the Petitioner's] work has been confirmed in the work of his peers" and offered the example of [redacted] who cited to the Petitioner's work in a paper, entitled [redacted]."⁷ [redacted]'s paper, however, does not distinguish or highlight the Petitioner's work from the 32 other articles he cited to in his paper.

With respect to the Petitioner's research relating to microfabrication of [redacted] micromodels, [redacted], professor at [redacted] University, stated that the Petitioner developed "a microfabrication method to model [redacted] using thirteen different layers of [redacted] features in plastic chips." In addition, [redacted] asserted that the Petitioner "was the first researcher to use the [redacted] . . . method to fabricate a pseudo [redacted] micromodel representing the [redacted]," but he does not offer examples of how the Petitioner's microfabrication method has been implemented, utilized, or applauded in the oil and gas industry.

⁶ While we discuss a sampling of these letters, we have reviewed and considered each one.

⁷ The record includes a copy of [redacted]'s paper in which he references the Petitioner's utilization of "a [redacted] specially designed to exert a [redacted] that would participate at a certain stage in the [redacted]. Among them, [redacted] have been presented by a number of researchers."

Regarding the Petitioner's "overall citation record," [redacted] professor at the University [redacted] indicated that the Petitioner's "work has been cited over twenty times collectively. This is above the average for research in an engineering field" As it relates to the citation of the Petitioner's work, the record includes June 2018 information from Google Scholar indicating that his three highest cited articles, entitled [redacted]
[redacted]
[redacted], "[redacted]" and "[redacted]" each received 20, 3, and 1 citation(s), respectively. The Petitioner does not specify how many citations for each of these individual articles were self-citations by him or his coauthors. Moreover, in response to the Director's request for evidence (RFE), the Petitioner submitted an updated Google Scholar list (dated April 24, 2019) reflecting a moderate increase of citations to his individual articles. He did not demonstrate how many of these additional citations occurred in papers published prior to or at the time of initial filing. *See* 8 C.F.R. § 103.2(b)(1).

Furthermore, the Petitioner provided data from Clarivate Analytics regarding baseline citation rates and percentiles by year of publication for various research fields, including "Engineering," "Geosciences," and "Materials Science." The Petitioner claimed that his paper coauthored with [redacted] and others, entitled [redacted]
[redacted] ranked among "the top 10% most-cited articles published in Engineering in 2013" based on the number of citations it has received (20) since that time. The Petitioner did not indicate whether he factored in any self-citations in determining this percentile ranking. Nor has he sufficiently explained his choice of the field of "Engineering," as opposed to "Materials Science" or "Geosciences," as the basis for comparison. Additionally, the documentation from Clarivate Analytics states that "[c]itation frequency is highly skewed, with many infrequently cited papers and relatively few highly cited papers. Consequently, citation rates should not be interpreted as representing the central tendency of the distribution."

The Petitioner's response to the Director's RFE included February 2019 information derived from "Microsoft Academic" that compares his citation and publication counts to those of other researchers in the areas of [redacted]
[redacted]. Again, the Petitioner did not indicate whether he factored in any self-citations in compiling his percentile rankings from Microsoft Academic. Moreover, the "Date of Collection" of the percentile rankings (February 11, 2019) post-dates the filing of the petition, and therefore the Petitioner has not shown that the 30 Google Scholar citations used in the Microsoft Academic percentile calculation occurred in papers published prior to or at the time of initial filing. *See* 8 C.F.R. § 103.2(b)(1). Regardless, the Petitioner has not demonstrated that the number of citations received by his published articles reflects a level of interest in his work from relevant parties sufficient to meet *Dhanasar*'s second prong.

The Petitioner maintains on appeal that he has a stronger citation record than Dr. Dhanasar, the petitioner in our *Dhanasar* precedent decision. While we listed Dr. Dhanasar's "publications and other published materials that cite his work" among the documents he presented, our determination that he was well positioned under the second prong was not based on his citation record. Rather, in

our precedent decision we found “[t]he petitioner’s education, experience, and expertise in his field, the significance of his role in research projects, as well as the sustained interest of and funding from government entities such as NASA and AFRL, position him well to continue to advance his proposed endeavor of hypersonic technology research.” *Id.* at 893. Further, as it relates to the Petitioner’s education, while his Ph.D. from [] renders him eligible for the underlying EB-2 visa classification, he has not shown that his academic accomplishments by themselves are sufficient to demonstrate that he is well positioned to advance his proposed endeavor.⁸ We look to a variety of factors in determining whether a petitioner is well positioned to advance his proposed endeavor, and education and citations are merely two factors among many that may contribute to such a finding.

Additionally, the Petitioner asserts that his “research has been funded by government and industry alike.” He presented five research papers that he coauthored with [] or [] and others in which the “Acknowledgements” section noted that their work was supported by the National Science Foundation or the Advanced Energy Consortium. These articles, however, do not identify who among their authors was primarily responsible for securing the funding for the research projects. In *Dhanasar*, the record established that the petitioner “initiated” or was “the primary award contact on several funded grant proposals” and that he was “the only listed researcher on many of the grants.” *Id.* at 893, n.11. Here, the record does not show that the Petitioner (rather than one of his professors or coauthors) was mainly responsible for obtaining funding for their research projects.

The record also includes a [] Best Paper Award from American Society of Mechanical Engineers (ASME) [] for the Petitioner’s paper, entitled [] [] that he coauthored with [] [] and three others. The Petitioner also presented a [] Certificate of Recognition from the ASME [] for his paper, entitled [] [] that he coauthored with [] and two others. As previously noted, the June 2018 information from Google Scholar indicated that the first paper received only three citations and the second paper received just one citation. While the Petitioner provided general information about the ASME and a fact sheet relating to its [] [] Award, he has not sufficiently demonstrated the significance or level of distinction of his awards in the field.

The record demonstrates that the Petitioner has conducted, published, and presented research during his graduate studies at [], but he has not shown that this work renders him well positioned to advance his proposed research. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance his proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual’s progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner, however, has not sufficiently demonstrated that his published and presented work has served as an impetus for progress in the mechanical engineering field or that it has generated substantial positive discourse in the oil and gas industry. Nor does the evidence otherwise

⁸ In *Dhanasar*, the record established that the petitioner held multiple graduate degrees including “two master of science degrees, in mechanical engineering and applied physics, as well as a Ph.D. in engineering.” *Id.* at 891.

show that his work constitutes a record of success or progress in advancing research relating to the effects of nanoparticles as [REDACTED] in biological organs, real rock reservoirs, and chemical [REDACTED]. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed research endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that he is eligible for a waiver due to his education, research experience and accomplishments, the importance of his field, and the impracticality of labor certification. However, as the Petitioner has not established that he is well positioned to advance his proposed endeavor as required by the second prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.